Office of Airport Planning
And Programming

U.S. Department
of Transportation
Federal Aviation
Administration

MAR 19 2001

Mr. Jerry Matsuda, P.E.
Airport Administrator
Department of Transportation
Airports Division
Honolulu International Airport
400 Rodgers Boulevard, Suite 700
Honolulu, HI 96819

Dear Mr. Matsuda:

Thank you for your December 1 submittal of the State of Hawaii Department of Transportation Airports Division's Competition Plan for Kahului Airport. We have reviewed your competition plan for conformity with the requirements of section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. 106-181, April 5, 2000. However, a final determination is being withheld pending submission of further materials, as outlined below. In addition, we offer some suggestions for your consideration as you implement and update your plan.

Section 155 of AIR 21 enacted 49 U.S.C. 40117(k) and 47106(f). These provisions require the filing of a competition plan for a covered airport seeking FAA approval of a Passenger Facility Charge (PFC) or of an Airport Improvement Program (AIP) grant application, beginning fiscal year 2001. The Secretary will review the competition plans to ensure that they meet the statutory requirements and review their implementation from time to time to make sure that they are successfully implemented. The legislative history of the requirement states that "[t]he underlying purpose of the competition plan is for the airport to demonstrate how it will provide for new-entrant access and expansion by incumbent carriers. By forcing the airport to consider this, it would be more likely to direct its AIP and PFC money to that end." H. Rpt. 106-513. The FAA's Program Guidance Letter (PGL) 00-3, May 8, 2000, addressed eight features of an airport's business practices required by section 155 of AIR 21.

As you know, section 155 was enacted after the Department of Transportation published its *Report on Airport Business Practices and Their Impact on Airline Competition* (*Airport Practices* report). That report identified a number of airport business practices that could serve as impediments to new entry or expansion of incumbent carriers at an airport and a number of best practices that airport management have followed to achieve compliance with airport sponsors' obligation to provide access to all aeronautical users on reasonable terms without unjust discrimination.

Your submittal generally addressed the areas specified in the statute. You have expressed your commitment to accommodate all gate requests, and note that the Airports Division retains total control of the terminal gates. However, we are requesting additional information within 30 days so that we may better understand the competitive opportunities at the Airport in light of the information you have already provided.

First and foremost, please provide a copy of the Airport-Airline Lease-Extension Agreement referenced in you plan as well as the Airport Division's Administrative Rules governing charges assessed on nonsignatory airlines. In addition, please address the issues set forth below. For your convenience, we have categorized our areas of concern according to the applicable features specified in PGL 00-3.

Availability of gates and related facilities

The competition plan states that all gates are owned and controlled by the Airports Division. However, the "Aircraft Parking and Gate Assignment Policy" attached to the plan refers to "all nonexclusive, state controlled areas at Kahului Airport." Elsewhere the competition plan refers to facilities under lease, "exclusive use terminal charges," and specifies that subleases are permitted only for leased facilities. Please clarify the number of gates or other facilities (if any) that are covered by leases and if so what type(s) of leases have been executed (e.g., short-term exclusive-use, preferential-use, or common-use arrangements). For gates or other facilities not covered by leases, please describe in more detail the nature and duration of the rights that carriers have to occupy the facilities, particularly with regard to "revocable permits." Are facilities allocated on a daily, monthly, or yearly basis? If facilities are assigned for periods longer than one day, what right does the Airports Division have to terminate or revoke an assignment before expiration of the assignment period?

The competition plan states that due to high gate utilization, there is an upper limit on gate capacity. Further, you note that the potential exists that once capacity is maximized, no additional gate request can be accommodated. Please specify the current usage and the maximum capacity for each type of gate and discuss how the capacity was determined. How soon does the Airports Division predict that the maximum capacity will be reached? Most importantly, at what time will lack of gate, ticket counter, or other terminal capacity force the Airports Division to deny requests for access to the Airport?

Finally, please provide a more detailed description of the steps that the Airports Division would take to accommodate a new entrant or expansion request by an incumbent carrier. The plan states that ticket counter space is currently the critical constraint at the airport, and if a new carrier requests ticket counter or office space, the Airports Division will analyze usage of both leased and permitted space in order to accommodate the request. Please provide more information on this process. Describe how the carrier would initiate such a request to the Airports Division and the information materials available to assist the requesting carrier. Specify the procedure and timeframe by which the carrier would be accommodated at the Airport with regard to gates, baggage facilities, and ticket counters. In the past year, how many carriers wishing to expand service or new entrants requested access, how were they accommodated, and what was the length of time between their requests for access and their starts of service?

Leasing and subleasing arrangements

The plan states that subleasing is allowed only on a lease and is prohibited under a revocable permit, and that conditions in the lease require Airports Division approval. Please provide additional information regarding any criteria or policies that the Airports Division applies in reviewing subleases for various facilities, including gates, ticket counters, and baggage claim areas, or equipment covered by leases. Does the Airports Division have any policies regarding the inclusion of mandatory ground handling clauses in subleases?

Please provide information on any formal or informal procedures for resolving disputes concerning access, sublease fees or terms, or ground handling services. The plan states that the Airports Division will disapprove, take all or a portion of, or require a change to, sublease rents that it considers excessive. Please describe how the Airports Division determines what is an excessive sublease rent, as well as any guidance on this matter available to carriers. Please also describe the process by which the Airports Division would "take" excessive sublease rents. Would the "taken" rents be returned to the sub-lessee carrier, and if not, why?

Your discussion of leasing property for ground handling companies needs clarification. The plan states that the Airports Division provides site preparation of lease lots, but also states that all improved lots are currently under lease and that any new companies would have to prepare unimproved lots at their own expense. Please explain whether the Airports Division would continue to provide site preparation of unimproved lots for new or pre-existing ground handling companies. If not, what policies does the Airports Division have regarding the adjustment of lease rates to reflect the additional site preparation costs that new ground handling companies would incur?

Gate assignment policy/common use gates

The "Aircraft Parking and Gate Assignment Policy" attached to the plan as Appendix 1 provides only limited guidelines for gate assignment, and does not describe fees and terms for use of parking and gate facilities. Please provide this more information as to how gates are assigned, particularly the degree of preference assigned to signatory carriers over nonsignatory carriers in terms of priority assignment and lower fees.

Please also provide the minimum requirements for an air carrier to obtain signatory status as it applies to the primary assignment factors. Please list any domestic airlines that operate in a nonsignatory status and describe whether or not any of these airlines have requested signatory status and, if so, the disposition of their requests by the Airport.

The plan does not state how air carriers are made aware of gate availability. Please describe the process by which the Airports Division informs all air carriers, both tenant and non-tenant, signatory and nonsignatory, as well as those carriers that have expressed interest in starting operations at Kahului Airport, of gate availability and terms and conditions.

Financial constraints

The plan indicates that aeronautical revenue (landing fees, aeronautical rentals, and system support charges) are governed by the airport-airline lease extension agreement. Please indicate the areas or provisions of the lease extension agreement that control the sources of revenue for airport improvements.

The plan indicates that residual rate setting (subject to the exclusion of certain duty free revenues and interest income on capital improvement funds) is the rates and charges methodology used at Kahului Airport. The plan notes that rates and charges include an "exclusive use terminal charge" as well as other charges. Please discuss the exclusive use terminal charge and the facilities to which its applies, along with the associated terms and conditions that apply to exclusive use space. Please also describe the Administrative Rules that apply to charges assessed on nonsignatory carriers as well as the differences in the amounts of fees paid by signatory airlines and nonsignatory airlines.

Whether the airport intends to build or acquire gates that would be used as common facilities

The plan notes that the Terminal Development Phase I project will expand the ticket lobby, provide more office space, and enhance the baggage claim devices. As such, once the environmental assessment is complete and construction can proceed, the project will alleviate a critical shortage of ticket and office space. Please provide more information on the numbers of new ticket counters that the project will provide and the amount of new air carrier service the new facilities will accommodate. Please also discuss whether the airport has any intentions to build or acquire gates that would be used as common facilities.

The plan also discussed the utilization of overseas gates versus interisland gates. The plan indicates that due to aircraft size, overseas aircraft cannot utilize the interisland gates. Are any interisland aircraft currently operating from the overseas gates?

In addition to the issues and information outlined above, we encourage the Airports Division to consider and address in a future update of the competition plan the following concerns and issues, in light of the best practices identified in the *Airport Practices* report. For your convenience, we have categorized them according to the applicable features discussed in PGL 00-3.

Leasing and subleasing arrangements

In the event that the Airports Division has not adopted dispute resolution procedures and policies, we encourage you to do so. Our *Airport Practices* report found that new entrants are more likely to be treated fairly if airports adopt procedures to resolve disputes between carriers.

Airport controls over airside and groundside capacity

We understand from the competition plan that you have a "concurrence methodology" clause in your agreements, which allows signatory airlines to delay a capital improvement project for up to one year. You note that this delay option has never been exercised. However, based on your description, the clause appears to be a form of a majority-in-interest (MII) agreement. Our *Airport Practices Report* recommended that airports ensure that MII agreements do not prevent or delay projects that could be beneficial to new entrants or other competitors. You may want to carefully consider revising the agreement language to control capital development on the airport when the opportunity presents itself.

Upon receipt of the information to be submitted within 30 days, the FAA will complete our review of the plan and advise you of our disposition.

If you have any questions regarding this letter or the FAA's review of your plan, please contact Mr. Barry Molar, Manager, Airports Financial Assistance Division at (202) 267-3831.

We look forward to receiving your response.

Sincerely,

Catherine M. Lang

Catherine M. Lang
Director, Office of Airport
Planning and Programming